



## **FEDERAL TRADE COMMISSION**

### **16 CFR Parts 1, 4, 306, 309, 323, and 500**

#### **Procedures for Responding to Petitions for Rulemaking**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) is updating its procedures for responding to petitions for rulemaking. These changes will provide increased transparency and promote public participation in the rulemaking process.

Pursuant to the amendments, the FTC will provide notice and an opportunity for public comment on petitions for the issuance, amendment, or repeal of regulations. The rules also provide greater guidance to the public on the procedures for filing petitions and the types of material that may be submitted in support of a petition.

**DATES:** This rule is effective October 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kenny Wright, Attorney (202-326-2907), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The Commission is revising parts 1 and 4 of its rules of practice, 16 CFR parts 1 and 4, to update procedures for handling petitions for rulemaking. These updated procedures will govern the handling of petitions for the issuance, amendments, or repeal of rules, including trade regulation rules issued pursuant to Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)), as well as other statutory grants of rulemaking authority. These procedures will also apply to requests to issue, amend, or repeal interpretive rules, including guides described in subchapter B of the Commission rules and other official Commission interpretations.<sup>1</sup> In addition, the

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<sup>1</sup> These new procedures do not alter or supersede the procedures described in subpart A of Part 1, 16 CFR

procedures will apply to petitions from regulated parties seeking exemptions from Commission rules.<sup>2</sup>

The amendments add a new subpart D in part 1 of the Commission rules to establish updated procedures for responding to petitions for rulemaking. Pursuant to these procedures, interested persons may petition the Commission for the issuance, amendment, or repeal of a regulation administered by the Commission, including an interpretive rule providing a Commission interpretation of a statute or regulation administered by the Commission.

Under the revised procedures, the Commission will publish petitions for rulemaking in the Federal Register and invite public comment on the merits of petitions. This change will promote public participation in the rulemaking process and allow the Commission to obtain useful public input in reaching a determination on whether to grant a petition for rulemaking.

The amendments also provide additional detail regarding the types of information that must be filed in support of a petition for rulemaking as well as the types of data that may assist the Commission in evaluating petitions. The rule describes the information and supporting data that must be included with any petition for rulemaking, including the name and contact information for the petitioner along with an explanation of how the petitioner's interests would be affected by the proposed action. The rule also requires petitioners to provide a thorough description of the action being requested along with a full explanation of the factual and legal basis for the requested action. The rule also provides guidance to petitioners on the types of information that may be relied upon to

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1.1 through 1.4, of the Commission's rules of practice governing requests for advisory opinions with respect to a course of action the requesting party proposes to pursue. Requests for individualized advisory opinions relating to the lawfulness of a specific course of conduct will continue to be handled pursuant to the procedures outlined in subpart A of Part 1.

<sup>2</sup> As described below, the Commission is also making conforming amendments to provisions in parts 306, 309, 323, and 500, which allow regulated parties to seek exemptions from Commission rules, to include a cross-reference to the Commission's updated procedures for responding to petitions for rulemaking.

support a petition including, but not limited to, research, industry data, and all scientific, technical, or statistical analyses prepared in support of the proposal.

The rule also provides instructions to the public on the mechanics for filing petitions for rulemaking, and additional detail on how the Commission will docket and handle petitions that are received. The revised rule also promotes transparency by ensuring petitioners are notified of a Commission decision to either initiate rulemaking in response to a petition or to deny the petition. In addition, the revised rule provides clearer instructions on how to obtain confidential treatment of information submitted in support of a petition.

These procedures will also apply to petitions for exemptions from Commission rules. Accordingly, the Commission is making conforming amendments to update cross-references to the Commission's procedures for responding to petitions for rulemaking and petitions for exemptions from an agency rule in several other FTC rules.

#### *§ 1.6 How promulgated.*

The amendments revise § 1.6 to clarify that the Commission will employ these updated procedures to respond to petitions seeking the issuance, amendment, or repeal of industry guides.

#### *§ 1.9 Petitions to commence trade regulation rule proceedings.*

The amendments revise § 1.9 to include an updated cross-reference to these new procedures in § 1.31 of the Commission's rules. This change makes clear that these new procedures will apply to petitions to issue, amend, or repeal trade regulation rules issued under section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)).

#### *§ 1.16 Petition for exemption from trade regulation rule.*

The amendments revise § 1.16 to include an updated cross-reference to § 1.31. Pursuant to these amendments, these new procedures will apply to petitions by individual regulated entities seeking an exemption from the application of a trade regulation rule.

*§ 1.25 Initiation of proceedings.*

The Commission is also revising § 1.25 of the Commission's rules, 16 CFR 1.25. This change makes clear that the new procedures will be employed to resolve petitions for rulemaking under authorities other than section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)).

*§ 4.2 Requirements as to form, and filing of documents other than correspondence.*

The amendments also incorporate an updated cross-reference to these new procedures in the Commission's filing rules contained in § 4.2 of the Commission's rules, 16 CFR 4.2.

*Other rule provisions.*

The Commission is also updating references to petition procedures in several FTC rules that provide for regulated parties to seek exemptions from Commission rules. Specifically, the Commission is updating cross-references to its petition procedures in the following rules: Automotive fuel ratings, certification and posting, 16 CFR part 306; Labeling requirements for alternative fuels and alternative fueled vehicles, 16 CFR part 309; Made in USA Labeling Rule, 16 CFR part 323; and Regulations under section 4 of the Fair Packaging and Labeling Act, 16 CFR part 500.

#### **IV. Procedural Requirements**

This rule is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), as a rule of agency organization, practice, and procedure. In addition, only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the Federal Register. The requirements of the Regulatory Flexibility Act also do not apply.<sup>3</sup>

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<sup>3</sup> A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

The Office of Management and Budget (“OMB”) has approved the information collections associated with requests for Commission action pursuant to the Commission’s rules of practice, including the petitions covered by these amendments. OMB has approved these information collections through June 30, 2024 (OMB Control No. 3084-0169). These amendments revise the procedures the Commission will employ to respond to such petitions and provide additional guidance to the public on what types of information and supporting materials should be submitted in support of a petition to allow the Commission to respond effectively. The amendments do not impose additional requirements and do not require further OMB clearance.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

## **List of Subjects**

### **16 CFR Part 1**

Administrative practice and procedure.

### **16 CFR Part 4**

Administrative practice and procedure, Freedom of information.

### **16 CFR Part 306**

Fuel ratings, Fuel, Gasoline, Incorporation by reference, Trade practices.

### **16 CFR Part 309**

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

### **16 CFR Part 323**

Labeling, US origin.

### **16 CFR Part 500**

Fair Packaging and Labeling Act, Incorporation by reference, Labeling,

Packaging and containers, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

## **PART 1—GENERAL PROCEDURES**

1. The authority citation for part 1 continues to read as follows:

**Authority:** [15 U.S.C. 46](#); [15 U.S.C. 57a](#); [5 U.S.C. 552](#); [5 U.S.C. 601](#) note.

2. Add an authority citation for subpart A to read as follows:

**Authority:** 15 U.S.C. 46, unless otherwise noted.

3. Revise § 1.6 to read as follows:

### **§ 1.6 How promulgated.**

Industry guides<sup>1</sup> are promulgated by the Commission on its own initiative or pursuant to petition filed with the Secretary pursuant to § 1.31, by any interested person or group, when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission. In connection with the promulgation of industry guides, the Commission at any time may conduct such investigations, make such studies, and hold such conferences or hearings as it may deem appropriate. All or any part of any such investigation, study, conference, or hearing may be conducted under the provisions of subpart A of part 2 of this chapter.

4. Revise the authority citation for subpart B of Part 1 to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. 601 note; 15 U.S.C. 46; 15 U.S.C. 57a.

5. Revise § 1.9 to read as follows:

### **§ 1.9 Petitions to commence trade regulation rule proceedings.**

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<sup>1</sup> In the past, certain of these have been promulgated and referred to as trade practice rules.

Trade regulation rule proceedings may be commenced by the Commission upon its own initiative or pursuant to written petition filed with the Secretary by any interested person stating reasonable grounds therefor. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

6. Revise § 1.16 to read as follows:

**§ 1.16 Petition for exemption from trade regulation rule.**

Any person to whom a rule would otherwise apply may petition the Commission for an exemption from such rule. Petitions for exemptions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

7. Revise the authority citation for subpart C of Part 1 to read as follows:

**Authority:** 15 U.S.C. 46; 5 U.S.C. 601 note.

8. Revise § 1.25 to read as follows:

**§ 1.25 Initiation of rulemaking proceedings—petitions.**

Proceedings for the issuance, amendment, or repeal of rules issued pursuant to authorities other than Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)), including proceedings for exemption of products or classes of products from statutory requirements, may be commenced by the Commission upon its own initiative or pursuant to petition. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

9. Add subpart D, consisting of § 1.31, to read as follows:

**Subpart D—Petitions for Rulemaking or Exemption**

**Authority:** 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.

**§ 1.31 Procedures for addressing petitions.**

(a) *Petitions for rulemaking.* An interested person may petition for the issuance, amendment, or repeal of a rule, administered by the Commission pursuant to Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)) or other statutory authorities. A

request to issue, amend, or repeal an interpretive rule, including an industry guide, may also be submitted by petition. For purposes of this section, a “petition” means a written request to issue, amend, or repeal a rule or interpretive rule administered by the Commission or a petition seeking an exemption from the coverage of a rule.

(b) *Requirements.* Petitions must include the following information:

(1) The petitioner’s full name, address, telephone number, and e-mail address (if available), along with an explanation of how the petitioner’s interests would be affected by the requested action;

(2) A full statement of the action requested by the petitioner, including the text and substance of the proposed rule or amendment, or a statement identifying the rule proposed to be repealed, and citation to any existing Commission rules that would be affected by the requested action;

(3) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant facts, views, argument, and data upon which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.

(c) *Supporting data.* If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods. Sources of information appropriate to use in support of a petition include, but are not limited to:

(1) Professional journal articles,

(2) Research reports,



(3) Official government statistics,

(4) Official government reports,

(5) Industry data, and

(6) Scientific textbooks.

(d) *Filing.* A petition should be submitted via email to [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov) or sent via postal mail or commercial delivery to Federal Trade Commission, Office of the Secretary, Suite CC-5610, 600 Pennsylvania Avenue NW, Washington, DC 20580. If the petition meets the requirements for Commission consideration described in this section, the Secretary will assign a docket number to the petition. Once a petition has been docketed, the FTC will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and an agency contact for inquiries relating to the petition. The petition number should be referenced by the petitioner in all contacts with the agency regarding the petition.

(e) *Confidential treatment.* If a petition contains material for which the petitioner seeks confidential treatment, the petitioner must file a request for confidential treatment that complies with § 4.9(c) of this chapter and two versions of the petition and all supporting materials, consisting of a confidential and a public version. Every page of each such document shall be clearly and accurately labeled “Public” or “Confidential.” In the confidential version, the petitioner must use brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. In the public version, the petitioner must redact all material for which it seeks confidential treatment in the petition and supporting materials or all portions thereof for which confidential treatment is requested. The written request for confidential treatment that accompanies the petition must include a description of the material for which confidential treatment is requested and the factual and legal basis for the request. Requests for confidential treatment will only be granted if the General Counsel grants the request in accordance

with the law and the public interest, pursuant to § 4.9(c) of this chapter.

(f) *Notice and public comment.* After a petition has been docketed as described in paragraph (d) of this section, the Office of the Secretary will provide public notice of the petition on behalf of the Commission in the Federal Register and publish the document online for public comment for 30 days through the Federal eRulemaking portal at <https://www.regulations.gov>. Any person may file a statement in support of or in opposition to a petition prior to Commission action on the petition by following the instructions provided in the Federal Register notice inviting comment on the petition. All comments on a petition will become part of the public record.

(g) *Resolution of petitions.* The Commission may grant or deny a petition in whole or in part. If the Commission determines to commence a rulemaking proceeding in response to a petition, the Commission will publish a rulemaking notice in the Federal Register and will serve a copy of the notice initiating the rulemaking proceeding on the petitioner. If the petition is deemed by the Commission as insufficient to warrant commencement of a rulemaking proceeding, the Commission will make public its determination and notify the petitioner, who may be given the opportunity to submit additional data. Petitions that are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

#### **PART 4—MISCELLANEOUS RULES**

10. The authority citation for part 4 continues to read as follows:

**Authority:** 15 U.S.C. 46.

11. Amend § 4.2 by adding paragraph (a)(1)(iii) to read as follows:

#### **§ 4.2 Requirements as to form, and filing of documents other than correspondence.**

(a) \* \* \*

(1) \* \* \*

(iii) Petitions for rulemaking and petitions for exemptions from rules shall instead be filed in the manner prescribed in § 1.31 of this chapter.

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## **PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING**

12. The authority citation for part 306 continues to read as follows:

**Authority:** 15 U.S.C. 2801 *et seq.*; 42 U.S.C. 17021.

13. Revise § 306.10(b)(2) to read as follows:

### **§ 306.10 Automotive fuel rating posting.**

(b) \* \* \*

(2) You may petition for an exemption from the placement requirements. You must state the reasons that you want the exemption. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

\* \* \* \* \*

14. Amend § 306.12 by:

- a. In paragraph (a)(2), revising the last two sentences; and
- b. In paragraph (a)(3), revising the last two sentences.

The revisions to read as follows:

### **§ 306.12 Labels.**

(a) \* \* \*

(2) \* \* \* You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

(3) \* \* \* You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

\* \* \* \* \*

## **PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES**

15. The authority citation for part 309 continues to read as follows:

**Authority:** 42 U.S.C. 13232(a).

16. Revise § 309.15(b)(2) to read as follows:

### **§ 309.15 Posting of non-liquid alternative vehicle fuel rating.**

\* \* \* \* \*

(b) \* \* \*

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

\* \* \* \* \*

17. Amend § 309.17 by:

- a. In paragraph (a)(1), revising the last two sentences; and
- b. In paragraph (a)(2), revising the last two sentences.

The revisions to read as follows:

### **§ 309.17 Labels.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \* You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

(2) \* \* \* You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

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#### **PART 323—MADE IN USA LABELING RULE**

18. The authority citation for part 323 continues to read as follows:

**Authority:** 15 U.S.C. 45a.

19. Revise § 323.6 to read as follows:

##### **§ 323.6 Exemptions.**

Any person to whom this rule applies may petition the Commission for a partial or full exemption. The Commission may, in response to petitions or on its own authority, issue partial or full exemptions from this part if the Commission finds application of the rule's requirements is not necessary to prevent the acts or practices to which the rule relates.

The Commission shall resolve petitions using the procedures provided in § 1.31 of this chapter. If appropriate, the Commission may condition such exemptions on compliance with alternative standards or requirements to be prescribed by the Commission.

#### **PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT**

20. The authority citation for part 500 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455.

21. Amend § 500.3 by revising paragraph (e) to read as follows:

##### **§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.**

\* \* \* \* \*

(e) Proceedings for the promulgation of such exempting regulations may be commenced by the Commission upon its own initiative or pursuant to petition filed with the Secretary

by any interested person or group stating reasonable grounds for the proposed exemption, pursuant to § 1.31 of this chapter.

By direction of the Commission, Commissioner Christine S. Wilson dissenting.

**April J. Tabor,**

*Secretary.*

**The following will not appear in the Code of Federal Regulations:**

**Statement of Chair Lina M. Khan**

A key priority of mine is ensuring that the FTC is regularly hearing and learning from the broader public, including the consumers, workers, and honest businesses we strive to protect. Guarding against insularity is a constant challenge for virtually all federal agencies, and ensuring the FTC is accessible even to those who lack well-heeled counsel or personal connections is essential to our institutional credibility. Introducing these open meetings and inviting public comments on a monthly basis has been part of an effort to democratize our work in this way.

Today, we are taking this effort one step further by implementing changes to our procedures around rulemaking. Congress granted the FTC the power to issue rules, equipping us with a vital tool to protect the public from harmful business practices. Interested members of the public will be able to petition the FTC to invoke its rulemaking and other authorities to advance its mission. The new procedures provide clearer guidance to the public on how to file a petition with the Commission and what steps the Commission will take after receiving a petition. These revised procedures will help ensure that all interested parties will have effective and meaningful access to the petition process. Each petition for rulemaking will be made publicly available; petitioners will be provided an agency point of contact to assist them throughout the process; and all petitions will be put out for comment so others can comment on them. Finally, the new procedures ensure that petitioners are notified of a Commission decision on the petition

one way or another.

As Chair, I am fully committed to finding ways to ensure our agency is directly connected to and responsive to the public we serve, and I welcome additional ideas for how we can modify our agency's processes to better meet these goals.

### **Statement of Commissioner Rohit Chopra**

The Constitution of the United States guarantees the right "to petition the Government." The Administrative Procedure Act also requires that an "agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." Federal agencies across the government have moved toward more transparent procedures to allow the public to file petitions for rulemaking. Unfortunately, Commissioners spanning multiple administrations pursued a more secretive and less accountable policy when individuals exercised their First Amendment rights.

The FTC used to publish routinely the petitions it received to allow for public inspection. Those petitions came on a wide range of concerns. For example, Commissioners received petitions on everything from the labeling of cage-free eggs, health benefit claims, and immigration consulting. In 2011, Commissioners largely abandoned the practice of publishing these petitions. While we have resumed publication of these petitions, we have not done so consistently or in an orderly fashion.

In 2019, the New Civil Liberties Alliance, a conservative legal advocacy group, petitioned the FTC to pursue a rulemaking regarding the procedures for defending agency guidance when challenged in court. My initial review suggested the actions requested in the petition may not have been the best use of resources, but the petition was not frivolous. I unsuccessfully argued to my colleagues that we should post the petition and solicit comment on it, along with others, consistent with the best practices published by the Administrative Conference of the United States, rather than what amounted to pretending we never received it. Even if we disagree, we shouldn't silence or censor

them.

The proposed rule changes will reverse the inappropriate practices implemented by prior Commissioners and allow interested persons to submit petitions for rulemaking. Petitions properly submitted will be posted for public inspection and the public will be allowed to comment.

This system is not perfect. Dark money groups funded by regulated entities may submit petitions and may manufacture fake comments, as federal agencies have seen in other regulatory proceedings. However, initiatives like these help loosen the grip large, dominant firms have held in order to secretly influence and dictate the agenda of this agency. Small businesses and community groups can't afford to hire high-priced FTC alumni with special access and connections to push their agenda. Making public every properly filed petition for rulemaking will level the playing field. This is another important step to be more transparent, to promote democratic debate, and to rebuild trust in the Federal Trade Commission.

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